

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1434V

UNPUBLISHED

BRIANNA ZABEK,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 19, 2022

Special Processing Unit (SPU);
Ruling on Entitlement; Uncontested;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Felicia Langel, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On September 18, 2019, Brianna Zabek filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) in her right shoulder as a result of an influenza (“flu”) vaccine administered to her on September 24, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 20, 2022, I issued Findings of Fact and Conclusion of Law, in which I found that Petitioner met her burden of proof regarding the site of vaccine administration and the six-month severity requirement. ECF No. 26 at 6-8. I ordered Respondent to file an Amended Rule 4(c) report in light of my findings.

¹ Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On September 19, 2022, Respondent filed his Amended Rule 4(c) report in which he states that he does not contest that Petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, Respondent states “[r]ecognizing that the Chief Special Master's factual findings that petitioner received the flu vaccine in her right shoulder and that she suffered the residual effects of her vaccine injury for more than six months after vaccination, respondent advises that he will not continue to defend this case on other grounds during further proceedings on entitlement before the Office of Special Masters, and requests a ruling on the record regarding petitioner's entitlement to compensation”. *Id.* at 2. Respondent further agrees that Petitioner has satisfied all legal prerequisites for compensation under the Act. *Id.* at 5.

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master